

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1171 OF 2022

1. Atmaram s/o Sampatrao Palaskar
 2. Haribhau s/o Runjaji Hiwale
 3. Rameshwar s/o Tukaram Gavare
 4. Vikas digambar Ghodke
 5. Sham s/o Karbhari Ghorpade
- Applicants

Versus

The State of Maharashtra

Respondent

Mr. A. K. Bhosle, Advocate for the applicants.
Mrs. R. P. Gour, APP for the State.
Mr. C. C. Deshpande, Advocate for informant.

WITH
CRIMINAL APPLICATION NO. 3596 OF 2022 IN
ANTICIPATORY BAIL APPLICATION NO. 1171 OF 2022

Shital Kalyanmal Pahade

Applicants

Versus

The State of Maharashtra & others

Respondents

Mr. C. C. Deshpande, Advocate for the applicant.
Mrs. R. P. Gour, APP for the State.
Mr. A. K. Bhosle, Advocate for respondents No. 2 to 6.

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 83 OF 2022

The State of Maharashtra

Applicants

Versus

1. Manoj @ Satish s/o Nanasaheb Bhalekar
2. Sachin s/o Atmaram Palaskar
3. Ajay s/o Atmaram Palaskar

Respondents

Mrs. R. P. Gour, APP for the State.

Mr. D. R. Gavhad, Advocate for respondents No. 1 to 3.

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 92 OF 2022

Syed Muzammil Ali s/o Rashid Ali

Applicants

Versus

1. The State of Maharashtra
2. Manoj @ Satish s/o Nanasaheb Bhalekar
3. Sachin s/o Atmaram Palaskar
4. Ajay s/o Atmaram Palaskar

Respondents

Mr. H. I. Pathan, Advocate for the applicant.

Mrs. R. P. Gour, APP for the State.

Mr. D. R. Gavhad, Advocate for respondents No. 2 to 4.

CORAM : R. M. JOSHI, J.

RESERVED ON : 1st AUGUST, 2023.

PRONOUNCED ON : 8th AUGUST, 2023.

ORDER

1. At the outset, learned counsel Mr. C. C. Deshpande for informant seeks permission to assist the Court in Anticipatory Bail Application No. 1171/2022. Permission granted.

2. In view of above, Criminal Application No. 3596/2022 is allowed.

3. Applicants have filed Anticipatory Bail Application No. 1171/2022 for grant of anticipatory bail in connection with Crime No. 110/2022 registered with Chikalthana Police Station, Dist. Aurangabad for offences punishable under Sections 143, 307, 324, 323, 147, 148, 149, 326, 504, 506, 427 of Indian Penal Code and under Section 135 of Bombay Police Act Section 4/25 of Arms Act. Whereas prosecution and State and injured/victim have filed applications bearing Application of Cancellation of Bail No. 83/2022 and 92/2022 respectively for cancellation of anticipatory bail granted to other accused in the said crime.

4. An incident occurred on 23rd March, 2022, wherein informant and his six friends had been to Gat No. 141. At that time, accused persons came to the spot with weapons in their hands. They

threatened the informant and others and assaulted them. There are specific averments in the First Information Report as to the role allegedly played by each accused. Accused Manoj, Sachin and Ajay filed Criminal Bail Application No. 634/2022 for seeking anticipatory bail in connection with this crime. Learned Additional Sessions Judge, Aurangabad, by order dated 18th April, 2022, granted pre-arrest bail to them. Similarly, liberty of applicants before this Court in Anticipatory Bail Application No. 1171/2022 was protected by passing order dated 30th August, 2022.

5. Learned counsel for victim/injured and learned APP contended that applications for cancellation of bail deserve to be allowed for the reason that learned Additional Sessions Judge has failed to take into consideration the material evidence on record and by relying upon the evidence placed by accused, case of prosecution could not have been disbelieved by the said Court. Apart from this, as far as applicants Rameshwar and Vikas in Anticipatory Bail Application No. 1171/2022 and Manoj, respondent in Application for Cancellation of Bail, are concerned, it is contended that these accused persons have misused the liberty granted by the Sessions Court by impugned order as well as interim relief granted by this

Court and they have committed serious crime of murder which is registered vide Crime No. 269/2023 with Chikalthana Police Station. It is their contention that applicants/accused have no regard for the law and considering their criminal history, anticipatory bail should not be granted and the one granted already by the Additional Sessions Judge deserves to be cancelled.

6. Learned counsel for applicants/accused submits that there are disputes between the parties over property and owing to the same, false implication of applicants cannot be ruled out. It is submitted that even the injured who filed application for cancellation of bail granted to some of the accused, while giving history to the Medical Officer, has candidly stated about he being assaulted by unknown persons. It is further submitted that infact there was compromise between the parties and informant has given no objection for grant of anticipatory bail to the applicants. The said contention is confirmed by learned counsel for the informant. It is further contention of learned counsel for the accused that learned Trial Court has rightly taken into consideration the material placed before it in order to hold that doubt is created about presence of applicants on the spot of the incident at the time of its occurrence.

On these amongst other contentions, applications for cancellation of bail are sought to be dismissed and pre-arrest bail is sought in Anticipatory Bail Application No. 1171/2022.

7. Perusal of First Information Report in Crime No. 110/2022 shows that there is allegation against Manoj, Sachin and Ajay of they coming to the spot along with eight unknown persons and that they caused assault on the informant and others. It is pertinent to note that the victim/injured who has preferred application for cancellation of bail, in his statement made to the Medical Officer, has claimed to have been assaulted by unknown persons. In such circumstances, subsequent statement of injured cannot be considered as gospel truth identifying the assailants. There is no denial of the fact that there are disputes between the parties over Gat No. 141. It is settled law that wherever parties are at logger head, the Court has to be careful in accepting allegations made, as there is every likelihood of commission of crime for previous enmity as well as false implication. In this regard if the order passed by Additional Sessions Judge is perused, then it clearly shows that CCTV footage placed on record indicates that applicants Manoj, Sachin and Ajay were present at some other place than the spot of

the incident. In the light of the fact that names of other accused are not mentioned in the First Information Report coupled with the fact that even injured was unable to name them while giving history to the Medical Officer, there is every reason to believe that this could be a case of false or over implication. In such circumstances, there is no substance in the contention of learned APP as well as learned counsel for the injured that bail granted to accused by learned Additional Sessions Judge deserves to be cancelled on this ground.

8. During the course of arguments, learned APP has placed on record photocopy of First Information Report in Crime No. 269/2023 registered with Chikalthana police station for offence punishable under Section 302 and other offences under Indian Penal Code. In respect of the said crime, an incident has occurred on 5th July, 2023 in which applicants Manoj, Rameshwar and Vikas along with co-accused caused grievous assault on the injured who died while treated in Cigma Hospital. As far as respondent Manoj is concerned, while granting pre-arrest bail to him, learned Additional Sessions Judge had imposed condition that he shall not commit similar type of offence. While enjoying said liberty granted by the Court, this accused has committed even more serious/grievous crime

like murder punishable under Section 302 of the Indian Penal Code. This fact clearly shows that there is abuse of liberty granted by the order of the Court and hence on that ground alone, bail granted to him deserves to be cancelled.

9. As far as accused Vikas is concerned, his liberty was protected by interim order dated 30th August, 2022, passed by this Court. His involvement in the crime committed on 5th July, 2023 shows his conduct of abusing the liberty granted by this Court. This Court finds substance in the contention of learned APP that these accused persons do not have any regard to the law. Considering his involvement in the serious crime like murder and misuse of liberty, it is not a fit case to grant anticipatory bail to applicant Vikas.

10. In view of above discussion, following order is passed :-

ORDER

(i) Anticipatory Bail Application No. 1171/2022 is partly allowed.

(ii) In the event of arrest of Applicant No. 1 Atmaram s/o Sampatrao Palaskar, Applicant No. 2 Haribhau s/o Runjaji Hiwale and Applicant No. 5

Sham s/o Karbhari Ghorpade in Anticipatory Bail Application No. 1171/2022, in connection with Crime No. 110/2022, registered with Chikalthana Police Station, for the offences punishable under Sections 143, 307, 324, 323, 147, 148, 149, 326, 504, 506, 427 of the Indian Penal Code, Section 135 of Bombay Police Act and Section 4/25 of Arms Act, they be released on bail on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) each with one solvent surety each in the like amount.

(iii) They shall attend the concerned police station once in a week.

(iv) They shall not contact the witnesses directly or indirectly.

(v) They shall not interfere with the evidence in any manner whatsoever.

(vi) They are further directed to cooperate the investigating agency for further investigation.

(viii) Anticipatory Bail Application No. 1171/2022 stands dismissed against Applicant No. 3 Rameshwar s/o Tukaram Gavare as withdrawn.

(ix) Anticipatory Bail Application No. 1171/2022 stands dismissed against Applicant No. 4 Vikas Digambar Ghodke.

(x) Applications for Cancellation of Bail No. 83/2022 and 92/2022 are partly allowed.

(xi) Bail granted by learned Additional Sessions Judge to respondent Manoj @ Satish s/o Nanasaheb Bhalekar by order dated 18th April, 2022 in Criminal Bail Application No. 634/2022 is hereby cancelled.

(R. M. JOSHI)
Judge

dyb